

STATE OF MICHIGAN
DEPARTMENT OF LABOR & ECONOMIC GROWTH
OFFICE OF FINANCIAL AND INSURANCE REGULATION
Before the Commissioner of Financial and Insurance Regulation

In the matter of

XXXXX

Petitioner

File No. 90629-001

v

Blue Cross Blue Shield of Michigan
Respondent

/

Issued and entered
This 9th day of September 2008
by Ken Ross
Commissioner

ORDER

I
PROCEDURAL BACKGROUND

On June 27, 2008, XXXXX (Petitioner) filed a request for external review with the Commissioner of Financial and Insurance Regulation under the Patient's Right to Independent Review Act, MCL 550.1901 *et seq.* The Commissioner reviewed the request and accepted it on July 7, 2008.

The Petitioner is enrolled for health coverage through the Michigan Education Special Services Association (MESSA). The coverage is underwritten by Blue Cross Blue Shield of Michigan (BCBSM). The Commissioner notified BCBSM of the external review and requested the information used in making its adverse determination. The Commissioner received BCBSM's response on July 17, 2008.

The issue in this external review can be decided by a contractual analysis. The contract here is the MESSA Choices II Group Insurance for School Employees certificate of coverage (the certificate). The Commissioner reviews contractual issues pursuant to MCL 550.1911(7). This

matter does not require a medical opinion from an independent review organization.

II FACTUAL BACKGROUND

The Petitioner began receiving outpatient psychotherapy from XXXXX, in 2004. BCBSM covered the claims for this care until February 2008 when it informed the Petitioner that it had paid the claims in error. BCBSM gave the Petitioner until April 5, 2008, to conclude treatment or find another mental health therapist who is a BCBSM eligible provider. BCBSM denied all coverage for care provided by Ash after April 16, 2008.

The Petitioner appealed BCBSM's decision to deny further coverage. BCBSM held a managerial-level conference on May 13, 2008, and issued a final adverse determination dated May 14, 2008.

III ISSUE

Is BCBSM required to further cover the Petitioner's treatment by XXXXX?

IV ANALYSIS

Petitioner's Argument

The Petitioner indicates that she has been receiving services from XXXXX since October 2004 and that this care was always paid under her MESSA health care plan until April 5, 2008. The Petitioner believes that BCBSM's sudden decision to deny coverage is a breach of contract and misrepresentation of coverage and that if BCBSM made an error in paying for her care it should allow her to continue treatment with XXXXX until her therapy is complete.

The Petitioner, informed that XXXXX was not an eligible provider under the terms of her coverage, notes that XXXXX has always worked under the supervision of XXXXX, PhD.

The Petitioner also believes that her therapy is at a critical stage and to change therapists at this time would adversely affect her condition.

BCBSM's Argument

BCBSM acknowledged that it initially covered XXXXX's services in error but says that it still must abide by the terms and conditions of the certificate. In Section 6 of the certificate (page 34), "Mental Health and Substance Abuse Services," it explains that:

All services must be medically necessary and provided by an eligible provider. [Emphasis added]

Eligible Providers

The network contains the following mental health and substance abuse treatment provider types who have agreed to provide services to MESSA members enrolled in MESSA Choices II.

- Licensed physicians
- Psychiatrists
- Fully licensed psychologists
- Certified clinical social workers*
- Certified nurse specialists in mental health*
- Hospital-based mental health facilities
- Outpatient psychiatric care facilities
- Hospital-based and freestanding residential substance abuse facilities
- Outpatient substance abuse treatment programs

**Services from these providers are covered only if performed in a panel outpatient psychiatric care facility or under the direct supervision of an MD or DO.*

BCBSM says that the Petitioner's provider does not meet the certificate's eligibility criteria. XXXXX is a certified nurse specialist in mental health who provides services in the office of XXXXX, PhD. XXXXX bills on the letterhead of Dr. XXXXX but she provides the services. XXXXX is not directly supervised by an MD or DO, and her services are not performed in a panel outpatient psychiatric care facility. Therefore, BCBSM says she is not an eligible provider.

BCBSM understands that it is not easy to change therapists and so it gave the Petitioner an additional 60 days of coverage after it determined that XXXXX was not an eligible provider.

Commissioner's Review

The Commissioner is sympathetic to the Petitioner's situation. She received treatment for several years from a provider that she says has helped her. According to the Petitioner, it took a long time to establish an open and trusting relationship with XXXXX and she is afraid that she and her two daughters will be harmed if the therapy is discontinued. She believed for years that the therapy was a covered benefit and was understandably upset when she learned that it will no longer be covered. Nevertheless, the certificate requires that mental health and substance abuse treatment be provided by an "eligible provider" and XXXXX does not meet the certificate's criteria.

XXXXX is a licensed nurse and a certified specialist in child and adolescent psychiatric and mental health nursing, but she does not work under the direct supervision of an MD or DO or in a panel outpatient psychiatric care facility. Therefore, she is not an eligible provider and her services are not a covered benefit.

Although BCBSM erred when it began covering XXXXX's services, there is nothing in the certificate that would require BCBSM to continue covering the therapy after it recognized its error. The Commissioner concludes that BCBSM correctly applied the terms and conditions of the Petitioner's certificate when it denied further coverage and uphold its May 14, 2008, final adverse determination.

**V
ORDER**

BCBSM's final adverse determination of May 14, 2008, is upheld. BCBSM is not required to cover the Petitioner's therapy from XXXXX after April 16, 2008.

This is a final decision of an administrative agency. Under MCL 550.1915, any person aggrieved by this Order may seek judicial review no later than sixty days from the date of this Order in the circuit court for the county where the covered person resides or in the circuit court of Ingham County. A copy of the petition for judicial review should be sent to the Commissioner of the Office of

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Financial and Insurance Regulation, Health Plans Division, Post Office Box 30220, Lansing, MI
48909-7720.